



APR 25 2006

F A X C O V E R

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Date: April 25, 2006 **Number of pages** (including cover): 4

To: US Patent and Trademark Office

Fax No.: (571) 273-8300

Serial No.: 09/316199-Conf. #7506

Title: METHODS AND PRODUCTS FOR INDUCING MUCOSAL IMMUNITY

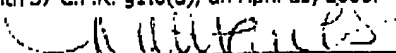
From: Maria A. Trevisan

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Our File #: C1040.70006US00

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Nicole M. Hawes

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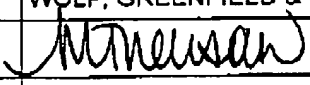
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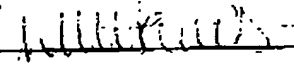
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TRANSMITTAL FORM <i>(to be used for all correspondence after initial filing)</i>	Application Number	09/316199-Conf. #7506
	Filing Date	May 21, 1999
	First Named Inventor	Heather L. Davis
	Art Unit	1633
	Examiner Name	Q. Nguyen
Total Number of Pages In This Submission		Attorney Docket Number C1040.70006US00

ENCLOSURES (Check all that apply)		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): Response to Notice of Non-Responsive Amendment
Remarks		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT			
Firm Name	WOLF, GREENFIELD & SACKS, P.C.		
Signature			
Printed name	Maria A. Trevisan		
Date	April 25, 2006	Reg. No.	48,207

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APR 25 2006

Docket No.: C1040.70006US00

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: McCluskie et al.
Serial No.: 09/316,199
Confirmation No.: 7506
Filed: May 21, 1999
For: METHODS AND PRODUCTS FOR INDUCING MUCOSAL
IMMUNITY
Examiner: Quang Nguyen
Art Unit: 1633

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Dated: April 25, 2006	Signature: <u>Nicole Milliette Hawes</u> (Nicole Milliette Hawes)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE TO NOTICE OF NON-RESPONSIVE AMENDMENT

Sir:

Applicant has received a Notice of Non-Responsive Amendment mailed April 18, 2006. The Notice states that the reply filed on January 30, 2006 was not fully responsive to the prior Office Action because Applicant simply deferred any rebuttal to the obviousness-type double patenting rejection.

The obviousness-type double patenting rejection was a provisional rejection. The Examiner is correct that Applicant deferred substantive rebuttal of the provisional rejection until the cited application is allowed. MPEP 804(I)(B) states that "the merits of such a provisional rejection *can* be addressed by both the applicant and the examiner without waiting for the first patent to issue" (emphasis added). Notably, the MPEP does not state that the merits *must* be addressed in such a situation. Moreover, the MPEP also states that "the 'provisional' double patent rejection should continue to be made by the examiner in each application as long as there are conflicting claims in more than one application unless that 'provisional' double patenting rejection is the only rejection remaining ...". *Id.* At that point, the examiner must withdraw the provisional rejection and allow the claims. Consistent with this practice, Applicant defers substantive rebuttal of the provisional rejection until the cited co-pending application is allowed, and in the alternative requests withdrawal of the rejection once it is the only remaining rejection.